IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Sukh Ram Vs. District Collector, Churu & Others.
(S.B. Civil Writ Petition No.419/2004.)

DATE OF ORDER : July 4th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. R.S. Choudhary for the petitioner.
Mr. Sangeet Lodha for the respondent(s).
Mr. S.N. Tiwari, Dy. G.A.

BY THE COURT :

By this writ petition, the petitioner is challenging judgment dated 24.12.2003, Annex.-3 passed by District Collector, Churu and prayed for restoring order Annex.-8 dated 15.11.2002 passed by the Panchayat Samiti, Churu in favour of the petitioner.

According to facts narrated in the writ petition, the petitioner is resident of Dhani Subhram (Hamirwas) and having possession over the land situated in the abadi area of village

Hamirwas for last 50 years. It is submitted that the petitioner has constructed residential dhani (hamlet) over the land and filed application on 05.04.2002 for issuing patta on the basis of old possession. According to the petitioner, he was informed by the Sarpanch, Gram Panchayat Hamirwas on 14.04.2002 that the land for which the petitioner has applied for patta is already allotted for the the purpose of 'public chowk' and patta has been issued in pursuance of the said information. The petitioner, therefore, applied for certified copy of the said patta but a photo-stat copy only was supplied by the Sarpanch informing that copy of the original patta is not available on record. It is further submitted that he is in peaceful possession of the said land and his family members are living in the dhani constructed thereon. It is contended that Ex-Sarpanch and respondents No.3 and 4 have issued patta illegally for 'Public Chowk' without following due process of law.

It is submitted by the petitioner that when it has come to the knowledge of the petitioner that patta has been issued in violation of the provisions of law on 07.01.1998 for the purpose of public-chowk, the petitioner filed appeal under Section 61 of the Panchayati Raj Act before the Panchayat Samiti, Rajgarh in which reply was filed by respondents No.3 and 4. Thereafter,

the Panchayat Samiti constituted a committee for inspection and enquiry about public-chowk, village Hamirwas. The said committee prepared a site map wherein it is clearly stated that petitioner is in possession of the land since long time and he has constructed pucca wall around it and raised fencing towards north side of the land. The panchayat samiti after receiving the report from the committee called the record of the Gram Panchayat, Hamirwas with regard to issuance of the said patta. The Secretary, Gram Panchayat submitted the documents before the Panchayat Samiti and vide letter dated 12.07.2002 it was informed by the Gram Panchayat, hamirwas that no documents with regard to public-chowk is on record nor there is any mention to this effect in the panchayat-bahi by the Ex-Sarpanch, respondent No.5. The petitioner has placed on record letter dated 12.07.2002. According to the petitioner, the Sarpanch of the Gram Panchayat wrote a letter on 16.09.2002 to the Block Development Officer, Panchayat Samiti, Rajgarh and informed him that patta of public-chowk is not available on record.

The Panchayat Samiti, Rajgarh, after perusing the site map prepared by the committee and having provided opportunity of hearing to the parties, allowed the appeal filed by the petitioner and cancelled the patta and directed the Gram Panchayat to

issue patta in favour of the petitioner vide order dated 15.11.2002, Annex.-8 to the writ petition.

Aggrieved by the order Annex.-8 dated 15.11.2002 passed by the Panchayat Samiti, Rajgarh, respondents No.3 and 4 filed revision petition before the District Collector, Churu and, in the revision petition, the Collector set aside the order dated 15.11.2002 by order dated 24.12.2003. Against order dated 24.12.2003, the petitioner has filed the present writ petition.

It is contended by learned counsel for the petitioner that the land in question is abadi land and it is adjoining to the public-chowk as per the site-map prepared by the committee and the petitioner is in possession of the said land for last 50 years. It is argued that the Gram Panchayat issued the patta of public-chowk on 07.01.1998 illegally without following any procedure of law and so also as per the report of the Sarpanch of the Gram Panchayat submitted to the committee constituted by the Panchayat Samiti, no record is available prior to 15.11.2002, therefore, the Panchayat Samiti rightly allowed the appeal of the petitioner vide order dated 15.11.2002 and set aside the patta issued illegally without following due procedure of law; but, the learned District Collector erroneously, without taking into consideration correct facts, set aside the order dated

15.11.2002. It is further submitted that order impugned Annex.-10 passed by the District Collector in the revision petition is perverse and suffers from illegality because there is no provision in law for issuing patta for allocation of public land and, if at all, patta is required to be issued, that too, must be issued in accordance with law. It is argued by learned counsel for the petitioner that non-availability of record with the Gram Panchayat shows that the Gram Panchayat has issued patta without following due procedure of law, however, that, too, was not available when the report was called for by the Panchayat Samiti, Rajgarh. According to the learned counsel, the District Collector has lost sight of all these aspects of the matter while passing the impugned order Annex.-10, therefore, the order Annex.-8 passed by the Panchayat Samiti, Rajgarh deserves to be restored.

Raising the legal issue, learned counsel for the petitioner contended that according to Chapter 9 of the Panchayati Raj Rules, 1996 with regard to immovable properties, there is complete procedure laid down for issuing patta, however, in this case, without following the procedure the Gram Panchayat issued the patta on 07.01.1998 and the appellate authority, therefore, rightly set aside the patta. Learned counsel for the petitioner,

therefore, prayed that the order dated 24.12.2003 (Annexure-3) passed by Distt. Collector in revision may be set aside and the Gram Panchayat may be directed to follow the directions issued by the Panchayat Samiti vide order dated 15.11.2002 for issuance of the patta in favour of the petitioner.

In reply to the writ petition, respondents No.3 and 4 raised a preliminary objection that the petition is not maintainable because in exercise of jurisdiction under Section 97(1), Panchayati Raj Act, the District Collector passed order dated 24.12.2006 which is perfectly legal order and, if the petitioner feels that the order has been passed by the District Collector under any mistake, then, the remedy of review before the State Government under Section 97(3) of the Act is available to the petitioner. It is submitted that the learned District Collector has observed that the appellate authority Panchayat Samiti Rajgarh has proceeded with the matter and passed order that the record pertaining to the issuance of patta is not available and as per the inspection report appellant Sukhram was in possession of the portion of land. The photo-stat copy of the proceedings drawn by the Gram Panchayat while issuing the patta was placed before the appellate authority as well as revisional authority and, therefore, the learned District Collector, after examining the

record, arrived at the finding that the patta has rightly been issued for the public chowk after following the procedure prescribed by law. It is contended by learned counsel for the respondents that the finding of fact is based on material on record and the petitioner, while assailing the validity of the order Annex.-10 dated 24.12.2003, wants this Court to enter into a roving enquiry into questions of fact. It is further contended that it is settled law that while exercising extraordinary jurisdiction this Court will not sit in appeal over the decision taken by the statutory authority so as to interfere with the finding of fact recorded on the basis of material on record.

Further objection to the writ petition has been raised by learned counsel for the respondents that the petitioner has deliberately concealed material facts and he has, in collusion with the present Sarpanch of the Gram Panchayat, suppressed the relevant material i.e., proceedings taken by the Panchayat while issuing patta of the land in question for the public chowk. It is contended that even the appellate authority did not choose to take notice of the proceedings taken by the Panchayat while issuing the patta though photostat copy of the proceedings was placed on record by the answering respondents and even in the order-sheet the fact with regard to placing on record photo-stat

copy of the proceedings has not been recorded by the Panchayat Samiti, Rajgarh.

It is further submitted by learned counsel for the respondents that the inspection report was requisitioned by the appellate authority but the respondents were simply not given any notice that such inspection of the land is being taken up by the committee in pursuance of the direction of the appellate authority, therefore, the inspection report which was prepared at the instance of the petitioner in collusion with the present Sarpanch of the Gram Panchayat Hamirwas was not open to be relied upon. According to learned counsel for the respondents the entire proceedings of the appellate authority was total farce and lacked bonafide and the same was proceeded with after taking a priori conclusion to set aside the patta issued for the public chowk which is totally illegal and petitioner cannot claim patta for the encroachment made by him on the public land.

It is also contended by learned counsel for the respondents that there is no documentary evidence produced on record by the petitioner with regard to possession over the land. The Gram Panchayat has rightly issued patta for the public chowk and the application submitted by the petitioner for issuance of patta in his favour on the basis of old possession is absolutely

misconceived. It is submitted that the resolution was adopted by the Gram Panchayat in respect of the land for which the petitioner is claiming patta upon application filed by the villagers for issuing patta for public chowk and, after charging fee, patta was issued for the 'sarvajanik chowk', therefore, there is no illegality in it.

It is further contended by learned counsel for the respondents that only on the basis of the report prepared by the inspecting committee without issuing notice to the respondents the Panchayat Samiti passed order while ignoring the material on record. Therefore, according to him, the order passed by the appellate authority is ex facie illegal and contrary to law. Therefore, while exercising the revisional power the District Collector rightly set aside the order passed by the appellate authority and held that there is no material on record to show that the petitioner was in possession over the land in question and patta was rightly issued for 'sarvajanik chowk' by the Gram Panchayat.

In rejoinder, learned counsel for the petitioner submitted that as per photo-stat copy Annex.-R3/1, placed on record by respondents No.3 and 4, issued in favour of public chowk, it mentioned the deposited money Rs.3,960/- as cost of land, but,

in the photo-stat copy of the said patta dated 07.01.1998 (Annex.-R3/1) obtained by the petitioner, there is no mention of deposition of money. It is submitted that in Annex.-R3/1, besides cost of land for sarvajanik chowk and "संकल्प संख्या 3 दिनांक 7.1.98" other blank spaces have not been filled in and have been left blank which shows that the patta issued in favour of "सार्वजनिक चौक", placed on record by the respondents is fabricated document, because, at the time of the decision of the appellate authority it was categorically stated that record is not available then how, subsequently, this document came on record.

Learned counsel for the respondents No.3 and 4 vehemently refuted the allegation and contended that if, at the time of issuance of copy to the petitioner by the Gram Panchayat, the amount was not filled in it cannot be said that the Annex.-R3/1 is fabricated document. It is contended that it was specifically mentioned while filing the document that complete process was followed at the time of issuance of the patta. The relevant portion of the reply submitted by the respondents in appeal runs as under :

> "जबकि सही तथ्य यह है कि मिन रेस्पोंडेन्ट संख्या - 1 व 2 के पिता श्री प्रभूराम एवं सुरेश फुल सिंह, अमर सिंह, राम निवास, केसराम, रामसिंह, महेन्द्र सिंह व अन्य ढाणी वासियों द्वारा

दिनांक 7-10-97 को एक प्रार्थना पत्र रेस्पोंडेन्ट संख्या - 4 के समक्ष प्रस्तुत किया गया । जिसमें यह तथ्य वर्णित किया गया था कि ढाणी शुभराम के आम सार्वजनिक चौक का पटटा बनाया जाये, जिससे ढाणी वासियों के रहने एवं आने जाने में सुविधा प्राप्त हो सके । क्योंकि यह ढाणी के मध्य काफी लम्बा एवं खुला चौक है । उक्त चौक का पट्टा नहीं होने के कारण लोग इसके चारों ओर से अतिक्रमण कर रहे हैं । प्रार्थना पत्र में यह भी तथ्य अंकित किया गया कि कुछ दिन पहले अपीलार्थी ने अपनी बाड़ चौक में सरकाने की कोशिश की थी । ग्रामवासियों के उक्त प्रार्थना पत्र पर विचार करनते हुए उक्त प्रार्थना पत्र को दिनांक 7-10-97 की पचांयत की मिटिंग में रखा गया, सभी पचों एवं सरपंच की राय के अनुसार तथा विचार कर नियमानुसार कार्यवाही करने का सचिव को आदेश दिया गया । दिनांक 22-7-97 की पंचायत की मीटिंग में उक्त प्रार्थना पत्र की फाईल प्रस्तुत हुई तथा उक्त भूमि के पट्टे के सम्बन्ध में भूमि का निरिक्षण पंच बनवारी लाल, पंच महेन्द्र एवं महिला पंच धनड़ी नियुक्त किये गये । जिन्हें अगली बैठक में रिपोर्ट पेश करने हेतु आदेशित किया गया । दिनांक 7-12-97 की पंचायत की बैठक में पंचों की निरिक्षण रिपोर्ट प्रस्तुत हुई, जिस पर विचार कर सचिव को एक माह का नोटिस आपत्ति जारी करने हेतु निर्देशित किया गया, जिसकी एक प्रति पंचायत के नोटिस बोर्ड पर व एक कापी सार्वजनिक आम चौक औषधालय की दीवार पर चस्पा हेतु तथा एक कापी ढाणी के नागरिकों के दस्तखत करवा कर आफिस कापी फाईल में लगा दी गयी । उक्त बैठक में हुए निर्णय के अनुसरण में दिनांक 7-12-97 को नोटिस ग्राम पंचायत के नोटिस बोर्ड एवं सार्वजनिक चौक औषधालय की दीवार पर चस्पा किया गया तथा इसकी जानकारी ढाणी के समस्त लोगों को थी तथा अपीलान्ट को भी उक्त तथ्य की जानकारी थी ।

दिनांक 7-01-98 को पचांयत की बैठक में एक माह की अवधि समाप्त होने पर तथा कोई उज्रदारी पेश नहीं होने पर पंचायत द्वारा यह निर्णय लिया गया कि

(1)जब से ढाणी बनी है तब से यह जगह सार्वजनिक चौक के लिये खाली पड़ी है इसी जमीन पर ढाणी के पशु बैठतें है तथा आवागमन की भी यही जगह है ।

(2)इस भूमि पर कोई अतिचार नहीं हैं ।

(3)इस भूमि का दूसरा को आवेदक नहीं है यह कोई वाणिज्य स्थल नहीं है ।

(4)ढाणी की आबादी एक हजार से कम है ।

(5)इस चौक के पुर्व से पनघट का रास्ता है ।

उक्त निर्णय के अनुसरण में रेस्पोंडेन्ट संख्या -4 द्वारा पट्टा मय नजरी नक्शा जारी किया गया । इस प्रकार रेस्पोंडेन्ट संख्या -4 द्वारा नियमानुसार भूमि का आवंटन नियमों की पालना करते हुए एवं समस्त कार्यवाही नियमानुसार करते हुए की गयी ।"

It is contended that though it was brought to the notice of the appellate authority by way of filing reply that complete procedure in accordance with law was followed but the same was not taken into consideration by the appellate authority, therefore, the District Collector has rightly observed that the order dated 15.11.2002 is totally erroneous, after hearing both the parties and perusing the record of the case, more specifically order dated 15.11.2002, vide impugned order dated 24.12.2003.

I am of the opinion that in this case it is required to be adjudicated upon whether the District Collector while exercising power under Section 97 of the Act rightly held that no patta can be issued for the land to be used for public purpose by way of 'sarvajanik chowk'. In this regard, I am in full agreement with

the submission of respondents No.3 and 4 that at the time of deciding the appeal filed by the petitioner the appellate authority ignored all material on record because by way of reply filed in appeal it was brought to the notice of the appellate authority that in what manner the patta was issued but the Panchayat Samiti only relied upon the site inspection at the instance of the petitioner. It is also obvious from the perusal of order dated 15.11.2002 that there is no material placed on record with regard to old possession, as claimed by the petitioner, and only assertion is made that he is in possession of the land in question for last 50 years but no material was placed before the appellate authority. From the facts on record, it is obvious that the appellate authority ignored all relevant record and did not take into consideration the pleadings of respondents No.3 and 4. It is evident that the order passed by the appellate authority is only based upon the report of the committee and thus there is material perversity in the finding recorded by the appellate authority vide the impugned order inasmuch as the appellate authority reached finding without considering the entire material on record. The District Collector called all material from the Gram Panchayat and having considered the matter in its totality observed that process for issuing patta was folllowed at the time

of allotment of the land for public chowk. Therefore, I see no reason to disbelieve or take a different view in the matter. I am in full agreement with the conclusion reached by the District Collector that the Panchayat Samiti has committed error while relying upon the report for issuance of the patta in favour of the petitioner. It is also held by the District Collector that there is no power with the Gram Panchayat to issue patta for public land which is kept reserved for public utility. In the facts and circumstances of the case, only on the basis of assertion of possession it is not sufficient to hold possession of the petitioner over the land in question. Likewise, whether patta was rightly issued in the name of 'Sarvajanik chowk' or not is totally irrelevant because respondents No.3 and 4 are not claiming the land for their personal use and they applied for the said patta with specific purpose of public chowk. Thus there is no personal interest of respondents No.3 and 4 in the land in question and the petitioner, on the other hand, claimed right over the land on the basis of old possession but there is no material on record that the petitioner was in possession for last 50 years and there is no material on record placed by the petitioner to show that the land is abadi land and not for the public chowk. Accordingly, there is no question of issuing patta in favour of the petitioner

before arrived at lawfully with the finding that petitioner is having possession over the land for last so many years and the land is abadi land, available for allotment to the petitioner. The petitioner did not prove by any documentary evidence that the land is abadi land. Obviously there is material perversity in the following conclusion reached by the Panchayat Samiti :

"अत: सर्व सम्मति से बाद विचार विमर्श निर्णय पारित किया जाता है कि पट्टा संख्या 8 दिनांक 7.1.98 को निरस्त किया जाता है तथा ग्राम पंचायत को आदेशित किया जाता है कि श्री सुखराम को उसके पुराने कब्जेशुदा भूखण्ड का नियमानुसार पट्टा दिया जावे एवं श्री सुखराम की कब्जा भूमि को छोड़ते हुए मौके के अनुसार नाप कर नक्शा तैयार किया जाकर नियमानुसार सुरक्षित सार्वजनिक चौक भूमि घोषित की जावे।"

It was not within the jurisdiction of the Panchayat Samiti to direct the Gram Panchayat to make aforesaid declaration. In these circumstances, in my considered opinion, the District Collector rightly set aside the order passed by the appellate authority. Consequently, no interference is warranted in the impugned order dated 24.12.2003 passed by the District Collector.

The writ petition is accordingly dismissed.

(Gopal Krishan Vyas) J.